STATE OF MICHIGAN

MACOMB COUNTY CIRCUIT COURT

CHRISTOPHER HUTCHINS,

Plaintiff,

vs. Case No. 2005-0244-NZ

MACOMB COUNTY JAIL, CORRECTIONAL MEDICAL SERVICES, MACOMB COUNTY SHERIFF'S DEPARTMENT,

Defendants.
_____/

OPINION AND ORDER

Defendants Macomb County Jail and Macomb County Sheriff's Department[1] have brought a motion for summary disposition.

Plaintiff filed this complaint on January 20, 2005, alleging that he underwent surgery to remove a blood clot in his right leg on March 30, 2003. Plaintiff claims that he was prescribed an anti-coagulant called Coumadin in order to prevent re-occlusion. Plaintiff alleges that he was detained for a probation violation, and transferred from Newaygo County Jail to Macomb County Jail on April 24, 2003 to await his hearing. He claims that a nurse from Newaygo County Jail instructed Macomb County deputies that he required daily doses of Coumadin and Tylenol for the post-operative care of his arteries. However, plaintiff alleges that Macomb County deputies and nurses informed him that the doctor was on vacation. He claims that they refused to provide these medications for the first six days he was held in the Macomb County

Jail. Plaintiff claims that he was forced to seek emergency medical treatment on May 9, 2003, three days after his release. Plaintiff asserts that another bypass was subsequently performed on his leg, his condition continued to worsen, and his leg was ultimately amputated on January 21, 2004.

Plaintiff seeks damages for the loss of his leg, pain and suffering, humiliation and embarrassment. Plaintiff has therefore brought Count I, for Fourth and Fourteenth Amendment violations, Count II, for Eighth Amendment violations, and Count III, for gross negligence.

Defendants have brought a motion for summary disposition pursuant to MCR 2.116(C)(8) and (C)(10). Summary disposition may be granted pursuant to MCR 2.116(C)(8) on the ground that the opposing party "has failed to state a claim on which relief can be granted." *Radtke v Everett*, 442 Mich 368, 373; 501 NW2d 155 (1993). All factual allegations are accepted as true, as well as any reasonable inferences or conclusions that can be drawn from the facts. *Id.* The motion should be granted only when the claim is so clearly unenforceable as a matter of law that no factual development could possibly justify a right of recovery. *Wade v Dep't of Corrections*, 439 Mich 158, 163; 483 NW2d 26 (1992); *Cork v Applebee's Inc*, 239 Mich App 311, 315-316; 608 NW2d 62 (2000).

A motion for summary disposition brought under MCR 2.116(C)(10) tests the factual support for the plaintiff's claim. *Arias v Talon Development*, 239 Mich App 265, 266; 608 NW2d 484 (2000). A motion under MCR 2.116(C)(10) must be supported by affidavits, depositions, admissions, or other documentary evidence. MCR 2.116(G)(3)(b). The adverse party may not rest upon mere allegations or denials of a pleading, but must, by affidavits or other

[1] As this Court has already granted summary disposition to defendant Correctional Medical Services, "defendants" shall refer only to Macomb County Jail and Macomb County Sheriff's Department throughout this Opinion and Order.

appropriate means, set forth specific facts to show that there is a genuine issue for trial. MCR 2.116(G)(4). If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted. *Smith v Globe Life Ins Co*, 460 Mich 446, 455; 597 NW2d 28 (1999).

In support of their motion for summary disposition, defendants argue that plaintiff has failed to state a claim on which relief can be granted concerning the Eighth Amendment, since plaintiff was a pretrial detainee rather than a convicted prisoner at the time of the alleged incident. Next, defendants argue that plaintiff has failed to state a claim under the Fourth Amendment since their employees' actions cannot be held to constitute an unreasonable search or seizure. Defendants argue that plaintiff's Fourteenth Amendment claims, while legally cognizable, must fail since there can be no genuine issue of fact as to whether defendants have a policy or custom of not providing medical treatment to inmates. Further, defendants urge that no state actors are involved in the treatment of inmates since all medical treatment is handled by Correctional Medical Services. Defendants also claim that their actions concerning the administration of the jail are protected by governmental immunity. Finally, defendants note that plaintiff's gross negligence claim must fail since gross negligence provides an exception to governmental immunity only in the case of individual state actors.

In response, plaintiff claims that he was in jail for a parole violation, and should be afforded the same Eighth Amendment protections as he would have been entitled to had he still been incarcerated for the underlying offense. Next, plaintiff argues that he has a valid claim under the Fourth Amendment, asserting that he has a property interest in his physical health such that the alleged deprivation thereof constituted a "seizure" of his health. Alternatively, he argues that his detention was an unreasonable seizure given his medical condition. Plaintiff argues that

his Fourteenth Amendment claims must not be dismissed, insofar as there is a genuine factual issue as to whether defendants had a policy or custom of depriving inmates of appropriate medical care. Plaintiff also argues that there is a genuine factual issue as to whether it was reasonable for defendants' employees to refuse to provide plaintiff with his clearly labeled medication. Lastly, plaintiff argues that government immunity does not bar his claims, asserting that there is an issue as to whether defendants' employees' conduct constituted gross negligence.

The Court shall first address defendants' contention that plaintiff's count under the Eighth Amendment is uncognizable. The Due Process Clause rather than the Eighth Amendment is applicable to the claims of pretrial detainees. *Bell v Wolfish*, 441 US 520, 535, n 16; 99 S Ct 1861; 60 L Ed 2d 447 (1979) (citation omitted). "Due process requires that a pretrial detainee not be punished. A sentenced inmate, on the other hand, may be punished, although that punishment may not be 'cruel and unusual' under the Eighth Amendment." *Id.*

Since plaintiff was detained pending trial for an alleged probation violation, the Eighth Amendment is inapplicable, and summary disposition of this count is appropriate pursuant to MCR 2.116(C)(8). Plaintiff's contention that he was not a pre-trial detainee because he was being held for a probation violation is incorrect. Until an individual's parole is official revoked, his "status [i]s akin to that of a suspect awaiting trial." *People v Wilden*, 197 Mich App 533, 539; 496 NW2d 801 (1992). Further, even if, *arguendo*, plaintiff were considered a sentenced inmate, his count for Eighth Amendment violations would still be dismissed pursuant to MCR 2.116(C)(10) for the reasons outlined in the discussion of plaintiff's Fourteenth Amendment claim, *infra*.

Next, the Court shall address defendants' contention that plaintiff's count for Fourth Amendment violations also fails to state a claim on which relief can be granted. The Fourth

Amendment, as applied to the states by the Fourteenth Amendment, prohibits unreasonable searches and seizures. See, e.g., *People v Manning*, 243 Mich App 615, 624 NW2d 746 (2000).

Plaintiff's contention that he has a property interest in his health, and that his illness constitutes a "seizure" of his health is supported by absolutely no citation to authority. Moreover, this Court is aware of no authority supporting the proposition that one's health itself (as opposed to, i.e., health insurance or healthcare benefits) constitutes a property interest protected by the Fourth Amendment.

On the other hand, there is at least some caselaw suggesting that "refusal to provide medical care to a suspect in custody" might constitute "an unreasonable seizure, such that it would violate the Fourth Amendment." *Estate of Carter v City of Detroit*, 408 F3d 305, 311 n 3 (6th Cir, Mich 2005). However, while this type of claim may be cognizable, "'there seems to be no logical distinction between excessive force claims and denial of medical care claims when determining the applicability of the Fourth Amendment,' . . . [and] there is no need to address the potential Fourth Amendment violation separately from the alleged Fourteenth Amendment violation." *Id.*

Therefore, the Court shall now turn to defendants' argument that plaintiff cannot establish that defendants' official policies or customs led to a deprivation of plaintiff's Fourteenth Amendment rights. 42 USC §1983 provides a remedy against any person who, under color of state law, deprives another of rights protected by the constitution or laws of the United States. *Payton v Detroit*, 211 Mich App 375, 398; 536 NW2d 233 (1996). The U.S. Supreme Court has observed that "the touchstone of the §1983 action . . . is an allegation that official policy is responsible for a deprivation of rights protected by the Constitution." *Monell v Dep't of Social Services of City of New York*, 436 US 658, 690; 98 S Ct 2018; 56 L Ed 2d 611(1978).

A §1983 action is also appropriate when "constitutional deprivations [are] visited pursuant to . . . 'custom' even though such a custom has not received formal approval through the body's official decisionmaking channels." *Id.* at 690-691. Absent such a policy or custom, however, a governmental agency cannot be held liable under a theory of respondeat superior. See *id.* at 691.

In the specific context of medical injuries sustained while incarcerated, it well established that the government has an obligation to provide medical care for prisoners. *Estelle v Gamble*, 429 US 97, 103; 97 S Ct 285; 50 L Ed 2d 251 (1976). Deliberate indifference to serious medical needs of prisoners is proscribed by both the Eighth and Fourteenth Amendments. *County of Sacramento v Lewis*, 523 US 833, 850; 118 S Ct 1708; 140 L Ed 2d 1043 (1998) (citations omitted). However, "an inadvertent failure to provide adequate medical care" is not actionable, nor is a "complaint that a physician has been negligent in diagnosing or treating a medical condition." *Estelle, supra* at 105-106. As such, "a prisoner must allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs." *Id.* at 106.

In the case at bar, the documentary evidence presented to this Court indicates that defendants' policy is that all inmates be treated by Correctional Medical Services on the day they are booked. See, e.g., Defendants' Exhibit C, Affidavit of Jail Administrator Michelle Sanborn. More importantly, the documentary evidence shows that plaintiff actually was treated by CMS on April 24, 2003, the day of his arrival at Macomb County Jail. Defendants' Exhibit B, CMS Medical Records at 25. During this initial treatment, plaintiff indicated that he did *not* have any problems requiring *immediate* medical attention, and he was placed on the "sick call list." *Id.* Plaintiff's medical records show that he received his medication on April 27, 2003, and met with a doctor on April 28, 2003. *Id.* at 3, 6. He received his medication each subsequent day for the duration of his incarceration. *Id.* There is no indication in any of plaintiff's medical records that

plaintiff ever complained about being in any pain. *Id.* at 5-6. During his twenty-six day incarceration, plaintiff was given 10 blood tests in order to monitor his risk of occlusion. *Id.* at 7-19. His medical records include 13 physician's orders pertaining to his treatment during the course of his incarceration. *Id.* at 1-4.

Under these circumstances, and given the scant documentary evidence which plaintiff has provided in opposition to this motion,[2] the Court is satisfied that there can be no genuine factual dispute as to whether defendants had a policy or custom of depriving inmates of medical attention. To the contrary, the evidence uniformly suggests that defendants' policy and custom is to provide inmates with medical attention upon their incarceration. Frankly, there is no indication, apart from plaintiff's unsupported and unsworn allegations, that defendants had a policy or custom of intentionally denying treatment to individuals in plaintiff's position. As such, there is no genuine issue of material fact precluding summary disposition of all of plaintiff's §1983 claims under MCR 2.116(C)(10).

Next, the Court shall address defendants' assertion that plaintiff's claim for gross negligence must fail as a matter of law. "Gross negligence" is defined as "conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results." MCL 691.1407(7)(a). However, actions for gross negligence can only be brought against the *individual* allegedly acting in a grossly negligent manner; they cannot be brought against the government agency itself. *Id.*, and see *Gracey v Wayne County Clerk*, 213 Mich App 412, 420; 540 NW2d 710 (1995), overruled on other grounds by *American Transmissions, Inc v Attorney General*, 454 Mich 135, 139; 560 NW2d 50 (1997). In the case at bar, plaintiff is attempting to

[2] A single, unsworn letter from plaintiff's treating physician discussing the possibility that plaintiff's alleged lack of Coumadin might have contributed to the amputation of his leg.

bring claims for gross negligence against defendants Macomb County Jail and Macomb County Sheriff Department, rather than against specific officers, employees, volunteers or members of a board, council, commission, or statutorily created task force of the government agencies at issue. Therefore, plaintiff's claim for gross negligence must be dismissed pursuant to MCR 2.116(C)(8).

Since plaintiff's claim for gross negligence must be dismissed for failure to state a claim, the Court need not address plaintiff's arguments concerning lack of proximate cause.

For the reasons set forth above, defendants' motion for summary disposition is GRANTED, and plaintiff's counts against defendants Macomb County Jail and Macomb County Sheriff's Department are DISMISSED. Pursuant to MCR 2.602(A)(3), this Opinion and Order resolves the last pending claim and closes this case.

IT IS SO ORDERED.

Dated: July 13, 2006

DONALD G. MILLER
Circuit Court Judge

CC: Eric L. Naslund
David D. Black
John Wm. Martin, Jr.
Ronald W. Chapman

DONALD G. MILLER
CIRCUIT JUDGE

JUL 13 2006

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CARMELLA SABAUGH, COUNTY CLERK
BY: _____ Court Clerk